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11 AMERICA CORPORATION

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 In re ATM FEE ANTITRUST LITIGATION

Master File No. C04-2676 CRB

16 This Document Relates To:

17 All Actions

CLASS ACTION

**DECLARATION OF JENNIFER E.
HAAG IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT ON
PLAINTIFFS' PER SE CLAIM**

18
19 I, Jennifer E. Haag, declare:

20 1. I am a Senior Vice President at Bank of America, N.A. ("Bank of America"). I
21 make this declaration from my own personal knowledge based on information known to me in
22 the course of my responsibilities with Bank of America. If called as a witness, I could and
23 would testify competently to the matters set forth below.

24 2. I joined Boatmen's Bank, a predecessor of Bank of America, in 1994. In 1996,
25 Boatmen's Bank merged with NationsBank. NationsBank and Bank of America merged in
26 1999. I refer herein to Boatmen's Bank, NationsBank and Bank of America collectively as
27 "Bank of America" in this declaration.
28

1 3. I have worked in the ATM Channel for Bank of America since 1996. During the
2 past eleven years, I have been involved in numerous aspects of the ATM Channel, including
3 finance, customer satisfaction, network management, fee pricing, and product development. I
4 am currently a Senior Vice President in ATM Product Management.

5 4. For more than two decades, Bank of America has been a member of one or more
6 ATM networks in the United States, including during much of this period the Star network.
7 Bank of America previously owned an interest in the Star network, but that interest was sold in
8 early 2001, and since that time Bank of America has had no control over the operations of
9 Star, including in connection with the establishment of Star's interchange fees.

10 5. Bank of America has also been a member of the following networks during some
11 or all of my tenure at Bank of America: Plus, Cirrus, MAC, Honor, Shazam, Presto, Pulse,
12 and NYCE. Bank of America has multiple ATM network options available to it. In selecting
13 the networks in which it participates, Bank of America considers a variety of factors, including
14 the size and scope of the network, the locations of its ATMs, and its fee terms, including terms
15 on interchange fees.

16 6. Bank of America's dominant motivation for membership in ATM networks is
17 and has been to make ATM network services available to our own customers (depositors), so
18 as to serve our customers and to enhance Bank of America's ability to compete with other
19 financial institutions for depositors. Although Bank of America has deployed over 17,000
20 ATMs and is the largest bank-owned ATM network in the United States, the extensive and
21 geographically-diverse ATM base that an ATM network such as Star provides represents a
22 resource that would be economically impossible for Bank of America to offer on its own.

23 7. From Bank of America's perspective, when selecting a network, a critical feature
24 of an ATM network is the principle of universal acceptance, through which the Bank can
25 assure its depositors that an ATM or Debit card issued by Bank of America can be used at any
26 ATM on the network. Bank of America would be reluctant to continue its membership in Star
27 if the network were unable to guarantee universal acceptance. An ATM network that cannot
28 offer universal acceptance cannot offer the enhanced customer service that Bank of America

1 seeks through its participation in ATM networks. Bank of America would not rely on an ATM
2 network that failed to offer Bank of America's depositors access to all ATMs that carry the
3 network's logo.

4 8. Bank of America would not be willing to participate in an ATM network that did
5 not have a comprehensive and binding set of operating rules that established all material terms
6 for transactions conducted over the network. Among those material terms are the amount,
7 timing, and other terms by which an ATM deployer will receive payment from the card-issuer
8 for providing a cash withdrawal to the other member's cardholder. As an ATM deployer,
9 Bank of America would naturally be unwilling to dispense cash to another bank's cardholder
10 unless there were some agreement in place establishing these terms. Bank of America
11 considers the amount of the interchange fee, if any, to be a necessary element of any such
12 agreement.

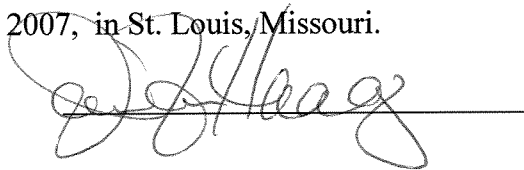
13 9. To my knowledge, Bank of America has never been presented with a situation in
14 which a network has proposed that the level of interchange fees (or any other material term for
15 foreign ATM transactions) would be determined solely through bilateral negotiations between
16 participants in the network instead of being established centrally by network rule. If
17 participation in the Star ATM network had required reaching bilateral agreements with every
18 other member of that network on the level of interchange fee (or any other material term for
19 foreign ATM transactions), it is unlikely that Bank of America would have been willing to
20 continue its participation in the network. The negotiation and administration of the vast
21 number of bilateral agreements necessary for such participation would be far too costly to
22 justify participation. If a regime of strictly bilateral negotiations on interchange had been in
23 place (or if such a regime were put in place in the future), Bank of America would explore
24 other alternatives, such as moving its membership to a different network that did not impose
25 that onerous requirement or, if that option were unavailable, seeking to supplement its own
26 ATM base with a limited number of bilateral contracts with large ATM deployers that
27 provided coverage in areas not adequately served by Bank of America's own ATMs.
28

1 10. Since at least 2001, Bank of America has been a net issuer for ATM transactions
2 over the Star network. By “net issuer,” I am referring to the fact that Bank of America has
3 paid other Star participants more in interchange fees on an annual basis than it has received in
4 interchange fees.

5 11. Bank of America charges many of its customers a “foreign ATM fee” for
6 transactions they conduct at ATMs not belonging to Bank of America. However, some
7 customers are not charged foreign ATM fees. Also, until recently, Bank of America allowed
8 some depository customers to make a certain number of foreign ATM transactions per month
9 before incurring foreign ATM fees. The decision on which customers will be charged a
10 foreign ATM fee, and under what conditions, forms part of Bank of America’s overall strategy
11 in packaging the services offered to various groups of its depository customers.

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct to the best of my personal knowledge.

14 Executed this 2 day of August, 2007, in St. Louis, Missouri.

A handwritten signature in cursive script, appearing to read "J. Haag", written over a horizontal line.

Jennifer Haag